IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 13.10.2006

Criminal Appeal No. 1627 of 2001
(Old No. 360 of 1995)

Girish Ram
S/o Nar Ram @ Naragan Ram
R/o Village Fagari, Patwari Kshetra
Tharkot, Tehsil-Pithoragarh
District Pithoragarh ....Appellant

Versus

State .....Respondent.

Shri Prabhakar Joshi, learned counsel for the appellant.
Shri Rajeev Mohan Birkhani, learned A.G.A. for the State.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 13.10.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Hon'ble Prafulla C. Pant, J

This appeal, preferred under Section 374 (2) of code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 20.02.1995, passed by learned Sessions Judge, Pithoragarh in Sessions Trial No. 14 of 1994, whereby appellant Girish Ram, has been convicted under Section 376 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.), and sentenced to rigorous imprisonment for a period of five years and also to pay fine of Rs. 5,000/-, in default of payment of which rigorous imprisonment for further period of one year was directed to be served.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story, in brief, is that appellant Girish Ram is resident of Village Fagali, Patti Tharkot, District Pithoragarh. P.W. 1 Jhupa Devi was also resident of

the same village. Her family had just two-three months back before the date of the incident, shifted to near by Village Chaumel, Patti Chaumel. On 12.07.1993, at about 1:00 P.M., Jhupa Devi, had gone to jungle of Village Fagali to graze her cattle. She was aged 15-16 years. The appellant Girish Ram, came there and snatched the sickle from the hand of P.W. 1 Jhupa Devi. He overpowered and made her lie down. When Jhupa Devi wanted to open her mouth to raise alarm, the accused by one hand closed her mouth and by another hand started pulling her panty. P.W. 1 Jhupa Devi, tried to resist her best but the accused took out his knife and threatened her of dire consequences. Thereafter, accused/appellant, committed rape on Km. Jhupa Devi, who cried in pain for help. But nobody could hear her cries in the jungle. The accused ran away from the scene of occurrence after committing rape. Soon thereafter it started raining and clothes of Jhupa Devi, got wet. She went back to her home and her parents came from Pithoragarh (District Headquarter) only by the evening. Jhupa Devi, narrated the entire incident to her parents. On next date, parents of the victim first contacted to the parents of the accused but they too expressed a very indifferent attitude. Ultimately, P.W. 3 Hem Ram (father of the victim), lodged First Information report (Ext. A-1) with the Patwari of the circle (In Uttaranchal hills certain revenue officers are given police powers). The girl was taken to the lady doctor, for medical examination. P.W. 6 Bal Kishan Pant, a Revenue Official, investigated the crime. After medical

Examination by P.W. 4 Dr,. Mamta Sharma, to ascertain the age of the girl, P.W. 1 Jhupa Devi was taken to P.W. 5 Dr. P.K. Gupta, Radiologist. After preparing the site plan (Ext. A-6), interrogating the witnesses, and on completion of the investigation, the Investigating Officer, submitted the charge sheet (Ext. A-10) against accused Girish Ram (present appellant).

4. On receipt of the charge sheet, it appears that the Magistrate concerned after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., committed the case for trial to the Court of Sessions Judge. After hearing the prosecution and the defence, learned Session Judge, framed charge of offence punishable under Section 376 I.P.C. against the accused Girish Ram, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Jhupa Devi (victim), P.W. 2 Rupa Devi (mother of the victim), P.W. 3 Hem Ram (informant and father of victim), P.W. 4 Dr. Mamta Sharma, P.W. 5 Dr. P.K. Gupta (radiologist) and P.W. 6 Bal Kishan Pant (Investigating Officer). The entire oral and documentary evidence was put the accused Girish Ram in reply to which he alleged that the evidence adduced is false and he has been implicated due to enmity. However, no evidence in defence was adduced on behalf of the accused. The trial court after hearing the parties, found accused Girish Ram, guilty of offence punishable under Section 376 I.P.C. and after hearing on sentence, sentenced him to rigorous imprisonment for five years and also to pay fine of Rs. 5,000/- in

Default of payment of which he was directed to undergo rigorous imprisonment for further period of one year. Aggrieved by said judgment and order dated 20.02.1995, this appeal was preferred before Allahabad High Court in the year 1995. from where it has been received by transfer to this Court, for disposal.

5. On going through the evidence on record, I found that P.W. 1 Jhupa Devi, a minor girl, has stated that on 12.07.1983, at about 1:00 P.M., she was grazing her cattle in jungle of village Fagali. At that time, accused Girish Ram, reached there and overpowered her and put off he panty. The witness states that she resisted but she was threatened on the point of knife. P.W. 1 Jhupa Devi further stated stat rape was committed on her. She further states that she cried for help, but in vain, as she was all-alone in jungle. The witness has further narrated that she was in pain and blood started coming out from her private parts. P.W. 1 Jhupa Devi, has further stated that after the incident, accused left the place and she came back to her home and at that time it started raining and her clothes got wet and washed. Lastly, she has stated that when her parents came back from District Headquarter, Pithoragarh, in the evening, she narrated the entire incident to them. P.W. 2 Rupa Devi, mother of the victim, has corroborated the fact that P.W. 1 Jhupa Devi, narrated the incident to her when she reached back from Pithoragarh. P.W. 3 Hem Ram father of the victim, also corroborated the said fact and stated that after his return, he went on next day to contact the parents of the accused to complaint about

the conduct of their son but the response of the parents of the accused was very indifferent and ultimately, he lodged First Information Report (Annexure-1) with Patwari. P.W. 6 Bal Kishan Pant, corroborated the fact that First Information Report was lodged, as mentioned above and investigation was conducted.

6. P.W. 4 Dr. Mamta Sharma, a Medical Officer of female hospital, Pithoragarh, has stated that she medically examined Km. Jhupa Devi at 11:30 A.M. on 15.07.1993 and prepared medical examination report (Ext. A-2). The witness has stated that the margins of Hymen were found red and inflamed. Only one finger was inserted in the vagina. However, no spermatozoa was present. This witness has also stated that the girl was aged sixteen years. Her hymen was found torn with red inflamed margins. She has further stated that there were abrasions on her stomach and legs. P.W.5 Dr. P.M; Gupta, Radiologist, who got X-ray for ascertaining the age of Km. Jhupa Devi, has also corroborated the fact that Jhupa Devi was aged sixteen years.

7. The natural statement of Km. Jhupa Devi is trustworthy and suffers from no suspicion. It is also clear from the medical evidence, discussed above that Jhupa Devi was subjected to rape. It is also established that she resisted, as she was not consenting party to the sexual intercourse. In the circumstances, this Court is in full agreement with the findings and the reasons

Recorded by the trial court, as to the commission of rape by accused/appellant Girish Ram on Km. Jhupa Devi.

8. Shri Prabhakar Joshi, learned counsel for the appellant, argued that from the cross examination of P.W. 1 Jhupa Devi, it appears that one Mohan was also grazing his cattle in the jungle. In this connection, it is further argued that had the incident taken place in the manner narrated by the aforesaid witness, on hearing alarm, Mohan would have come o the rescue of victim. It is further contended that non-examination of Mohan, makes the prosecution story doubtful. I have examined the evidence. It has nowhere come on record that said Mohan was at such a distance from the victim from where he could have heard alarm. As such, I see little force in the argument advanced on behalf of the appellant.

9. On behalf of the appellant, attention of this Court is also drawn to the contradiction in the statements of witnesses. It is pointed out that P.W. 1 Jhupa Devi has stated that she was medically examined on the next date of the incident while statement of P.W. 4 Dr. Mamta Sharma, makes it clear that Jhupa Devi was examined medically on 15.07.1993. Considering the fact that the victim is a village girl of young age and in the court at times witnesses get nervous, such minor contradiction cannot be said to be material to discredit the evidence of Jhupa Devi regarding commission of rape on her by the appellant.

10. Lastly, it is contended that the Investigation Officer has not got the appellant medically examined was such it cannot be said that it was actually appellant who committed rape on the victim. I'm unable to accept submission made on behalf of the appellant for the reason that had the accused/appellant arrested immediately after the incident on that very day, on medical examination, smear of the girl's vagina could have been found on private part or clothes of the accused, but when his arrest is made after couple of days, it cannot be said that accused/appellant had not taken bath till then or has not washed his clothes.

11. For the reasons, as discussed above, I see no reason to interfere with the impugned judgment and order, passed by the trial court, convicting the appellant under Section 376 I.P.C. and sentencing him to undergo rigorous imprisonment of five years and to pay fine of Rs. 5,000/- Therefore, the appeal is liable to be dismissed. The appeal is dismissed.

Dt. 13.10.2006 **(Prafulla C. Pant, J.)**

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